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HOUSE BILL 3074 By
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SENATE BILL 3363
By Fowler

AN ACT to enact the Balance of Powers Restoration Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Balance of Powers Restoration Act."

SECTION 2. It is the intent of the general assembly to restore the balance of powers between and among the branches of government as established by the people in the state constitution, to ensure all political power is retained by the people, to protect, maintain and secure individual rights and the perpetuity of free government, to guarantee the right of self-government, and to establish a process for preserving the independence of the legislative, executive, and judiciary departments.

SECTION 3. The general assembly finds that:

(a) President Thomas Jefferson declared in 1807, "The Constitution intended that the three great branches of government should be coordinate, and independent of each other. As to acts, therefore, which are to be done by either, it has given no control to another branch...It did not intend to give the judiciary that control....I have long wished for proper occasion to have the gratuitous opinion in *Marbury v. Madison* brought before the public, and denounced as not law....the doctrines of that case were given extrajudicially and against law...."

(b) The doctrine of judicial review that the courts have the sole and final say in interpreting the constitution on behalf of all three branches of government has been subject to serious analysis and criticism by scholars, jurists, and others for over almost two hundred years.

(c) The doctrine of judicial review assumes that the judiciary has a superior right to conclusively decide constitutionality and having no basis in the written constitution should not be binding on the legislative or executive branches of government acting within their express sphere of authority provided for in the constitution.

(d) It is a fundamental principle that all political power is inherent in the people and not in the institutions of government, that the very purpose of a written constitution is to establish fundamental and paramount law, that any act of the legislative, executive, or judiciary branches of government repugnant to the constitution must be void, and that nowhere is it stated in the constitution that the judiciary has the ultimate right to say what is constitutional and to order the other branches of government to concur with its determination as a matter of constitutional law.

(e) For the judiciary to "...decide what laws are constitutional and what are not, not only for themselves in their own sphere of action, but for the legislative and executive also in their spheres, would make the judiciary a despotic branch...", (Thomas Jefferson, 1804) and lead to tyranny by government, the precise thing the people of this state intended to prevent by establishing a constitutional representative government in order to secure the rights of life, liberty, and the pursuit of happiness for each individual citizen.

(f) Because the judiciary has used the doctrine of judicial review to override the self-expression of a free people and to override duly enacted laws, even those of long-standing in both form and practice, the legislature is

compelled to reassert its constitutional prerogatives and restore the balance of powers established in the fundamental and paramount law.

(g) The respect, deference, and accommodation given to the opinions of the judiciary by the legislative and executive branches are based on the intellectual integrity of the court's reasoning in interpreting a statute considering and conforming to the plain meaning of the words contained therein, the intent of the legislators who enacted the statute, the historical context in which the legislation was passed, and a reasonable application of the law to the facts before the court.

(h) Officers in the legislative, executive, and judicial branches are sworn to ultimately uphold the constitution, not the meaning given it by another branch. If officials of any branch act unconstitutionally they are ultimately responsible to the electorate and are held accountable exclusively and directly by the people alone.

SECTION 4. If the supreme court or an intermediate appellate court of the state of Tennessee determines that a legislative act, or any part thereof, violates the Constitution of Tennessee, the conflict between the two equal branches of government shall be resolved as follows:

(a) Upon determining that it considers a legislative act to be in conflict with the constitution the court shall declare its opinion that it considers the act to be void and unenforceable.

(b) The opinion of the court that an act of the general assembly is unconstitutional shall be the law of the case before the court unless and until overruled by a higher court but shall extend no further than the facts of the case.

(c) The house and the senate during a regular or special session of the legislature may vote by a constitutional majority to expressly affirm the

constitutionality of the legislative act and to expressly reject the determination of the court.

(d) A vote to affirm the constitutionality of the legislative act shall be taken forthwith upon the written demand of not less than fifteen percent (15%) of the members of the house or senate, and the names of the members voting for and against the affirmation shall be entered on the journal of each house.

(e) The question before each house shall read exclusively, “The general assembly hereby determines, declares, and affirms that _____ (the act designated by bill number and chapter number as indicated in the session laws whether codified or uncodified) as enacted is constitutional, the opinion of the judiciary notwithstanding”

(f) The question shall be placed so that a yes vote is to affirm the constitutionality of the legislative act and a no vote is to affirm the opinion of the judiciary.

(g) Upon a positive vote by both the house and the senate to affirm the constitutionality of the legislative act, the legislative determination shall be effective immediately and the legislative act in consideration shall be considered binding on all effected persons thereby from the effective date of the act, notwithstanding the opinion of the judiciary, provided that the decision of the case shall remain binding on the parties thereto.

SECTION 5. If the general assembly is not in session, the house and the senate may express their sentiment to affirm the constitutionality of the legislative act by a vote of a majority of the members of each house. A vote to express the legislative sentiment to affirm the constitutionality of the legislative act shall be taken forthwith upon the written demand of not less than fifteen percent (15%) of the members of the house or senate and the names of the members voting for and against the same or not voting shall be made available to the public. The question before each member shall read

exclusively as stated above and shall be submitted to each member individually in written form. The form shall be signed by each member voting yes or no and shall be returned to the speaker of the house or the speaker of the senate, as appropriate, no later than thirty (30) days from the date of the demand. If there is a positive vote by members of both the house and the senate to express the legislative sentiment to affirm the constitutionality of the legislative act, the general assembly shall vote on whether to affirm the constitutionality of the legislative act as the first order of business after the next legislative session is convened.

SECTION 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 7. This act shall take effect upon becoming law, the public welfare requiring it.